

**ORDINANCE NO. 6  
SERIES 2013**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, AND RETAIL MARIJUANA STORES WITHIN THE BOUNDARIES OF THE CITY OF GUNNISON.**

**WHEREAS**, the City of Gunnison, Colorado, (the “City”) is a home rule municipality and has broad constitutional and statutory powers to regulate businesses and the use of land within the City limits; and

**WHEREAS**, pursuant to said authority and the provisions of the City’s Charter, the City has adopted certain policies, plans, ordinances, and resolutions pertaining to the regulation of business and the development of property within the City limits, levying taxes, and establishing penalties for the violation of ordinances; and

**WHEREAS**, the City currently has no ordinances or regulations addressing the retail or commercial cultivation, manufacture, testing and sale of marijuana as defined by Article XVIII, Section 16, of the Colorado Constitution, which constitutional amendment (Amendment 64) was approved by voters on November 6, 2012; and

**WHEREAS**, pursuant to the provisions of Article XVIII, Section 16, Part 5(f), of the Colorado Constitution, a governing body of a municipality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores; and

**WHEREAS**, the City Council has carefully considered the provisions of Article XVIII, Section 16, of the Colorado Constitution, and the impact of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, on the health, safety, and welfare of the City and inhabitants thereof, and has determined as an exercise of its local land use authority that such marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, shall not be located within the corporate limits of the City, nor shall licenses be granted for the same.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:**

Section 1. Findings and Legislative Intent. The City Council makes the following legislative findings:

- A. The City Council finds and determines that Part 5(f) of Article XVIII, Section 16, specifically authorizes the governing body of a municipality to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, within its boundaries.
- B. The Council finds and determines after careful consideration of the provisions of Article XVIII, Section 16 of the Colorado Constitution, and after evaluating the impact of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, on the health, safety, and welfare of the City and inhabitants thereof, that such land uses have and adverse effect on the health, safety, and welfare of the City and the inhabitants thereof.
- C. The City Council therefore finds and determines that as a matter of the City’s local land use and zoning authority as a home rule municipality pursuant to the provisions of Article XX, Section 6, of the Colorado Constitution, and consistent with the authorization provided by Article XVIII, Section 16 of the Colorado Constitution, and those specific authorizations set forth in Section 2 below, that no suitable location exists within the corporate limits of the City for the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores and shall be prohibited within the City limits.

Section 2. Authority. The City Council hereby finds, determines and declares that it has the power and authority to adopt this Article pursuant to:

- A. Article XVIII, Section 16 of the Colorado Constitution;
- B. The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
- C. The powers contained in the City of Gunnison Municipal Home Rule Charter;
- D. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, PART 1, C.R.S.;
- E. Part 3 of Article 23, Title 31, C.R.S. (concerning municipal zoning powers);
- F. Section 31-15-101, et seq., C.R.S. (concerning municipal police powers);
- G. Section 31-15-401, C.R.S. (concerning municipal police powers); and
- H. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Section 3. Definitions. Unless otherwise specified or the context otherwise requires, any terms used herein shall have the same meanings as provided in Article XVIII, Section 16 of the Colorado Constitution. These definitions include, but are not limited to, the following:

- A. "Marijuana" or "Marihuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" or "Marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- B. "Marijuana Accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.
- C. "Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
- D. "Marijuana Establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
- E. "Marijuana Product Manufacturing Facility" means an entity licensed to purchase marijuana, manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.
- F. "Marijuana Products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.
- G. "Marijuana Testing Facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

- H. "Retail Marijuana Store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Section 4. Violation/Penalty/Enforcement.

- A. Violation. It shall be a violation of this ordinance for any person to operate a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, or retail marijuana store within the City limits.
- B. Penalty. Any person, upon conviction of a violation of the provisions of this ordinance, shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than ninety (90) days, or both such fine and imprisonment. Each and every day, or portion thereof, during which any violation of any of the provisions of this ordinance is committed, continued, or permitted, shall be deemed a separate offence.
- C. Enforcement. The City of Gunnison Police Department shall have the authority to enforce the terms of this ordinance. In addition to remedies provided under Chapter 5 of the City of Gunnison Municipal Code, the City is specifically authorized to seek an injunction to discontinue the violation of any provision of this ordinance.

Section 5. Severability. Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the City Council of the City of Gunnison, Colorado, that the remaining provisions of this ordinance shall be given full force and effect if it is possible to do so.

**INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED** this 12th day of February, 2013, on first reading, and introduced, read, passed and adopted on second and final reading this 26th day of February, 2013.

Ellen Hamman  
Mayor

(SEAL)

ATTEST:

Gail A. Davidson  
City Clerk

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